

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
February 7, 2023 Session

**FILED**  
10/27/2023  
Clerk of the  
Appellate Courts

**JOSHUA AARON BRADLEY v. JENNIFER RACHEAL BRADLEY  
(ODOM)**

**Appeal from the Chancery Court for Hickman County  
No. 16-CV-5822 Michael E. Spitzer, Chancellor**

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**No. M2022-00259-COA-R3-CV**

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A father filed a petition to modify the existing parenting plan. The trial court found a material change in circumstances had occurred and it was in the child’s best interest to award custody to the father. Because the evidence does not preponderate against either finding, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which ANDY D. BENNETT and JEFFREY USMAN, JJ., joined.

Richard Boehms, Hohenwald, Tennessee, for the appellant, Jennifer Bradley Odom.

Douglas Thompson Bates IV, Centerville, Tennessee, for the appellee, Joshua Aaron Bradley.

**OPINION**

**I.**

**A.**

Joshua Aaron Bradley (“Father”) and Jennifer Bradley Odom (“Mother”) divorced in 2017. As part of the divorce decree, the Hickman County Chancery Court adopted the parents’ agreed permanent parenting plan for their minor child. The agreed plan named Mother primary residential parent and granted Father 148 days of residential parenting time.

Three years later, Father filed a petition for emergency custody in juvenile court. He alleged that Mother's new husband, Erik Odom ("Stepfather"), whipped the child with a belt for small infractions. The juvenile court enjoined Stepfather from physically disciplining the child. It also ordered the Tennessee Department of Children's Services to provide services to the family.

Several months later, Father non-suited his juvenile court case and petitioned the chancery court for a change in custody. His chancery court petition repeated the allegation that Stepfather used a belt to discipline the child. Father also alleged that Mother made unilateral educational decisions and failed to provide a suitable and stable home environment. Father then filed a motion to prohibit any contact between Stepfather and the child. After a hearing on the motion, the court reaffirmed the previous juvenile court order precluding Stepfather from physically disciplining her.

## B.

The court heard proof on Father's modification petition at two hearings approximately six months apart. Most of the proof at the first hearing concerned the use of corporal punishment in Mother's home and its impact on the child's emotional and mental health. The court heard testimony from Father, his fiancé, Mother, Stepfather, and the child's therapist.

Both Father's and Mother's households had changed since the divorce. Father now lived with his fiancé, Raven Williams, and their two sons. The child had a good relationship with Ms. Williams and her half-brothers. During the week, Father delivered and set up equipment for hospice patients from 8:30 a.m. to 6:00 p.m. Ms. Williams cared for the children while Father was working.

Mother had married Stepfather in 2019. They had a seventeen-month-old son. Mother also had custody of a daughter from a previous relationship. The child and her half-sister were seven and ten, respectively, at the time of the first hearing.

According to Father, the child's demeanor had changed sometime after Mother's remarriage. The child had always been outgoing and happy. But she began to cry all the time. She spent more time alone in her room. And she stopped sharing her feelings. Eventually, she disclosed that Stepfather whipped her with a belt for small infractions, like drinking a soda. Disturbed by this revelation, Father contacted Mother. He learned that she was fully aware of Stepfather's actions. Mother assured Father that she would take charge of disciplining the child. But the child reported otherwise.

Father agreed that Mother loved the child and had a good relationship with her. And Father understood that the whippings stopped after the juvenile court issued its restraining order. But he complained that Stepfather still walked around with a belt in his hand. Father

also learned that Mother planned to move into a new school district. He objected to changing schools while the child was in emotional distress.

Father's concerns about Stepfather's behavior and the potential disruption of the child's school life prompted him to seek primary custody. He also requested sole decision-making with respect to the child's education and extracurricular activities. Father maintained that it was in the child's best interest to remain at her current school. She liked her teacher, had plenty of friends, and greatly enjoyed playing on the school soccer team. Her teacher confirmed she was thriving academically and socially.

Adam Luke, a licensed marriage and family therapist, testified as an expert on the child's mental health and counseling needs. Because of the pandemic, his sessions with the child were conducted over Zoom. At first, she was unwilling to talk about her emotions. She was especially reticent about her relationship with Stepfather. The therapist also found her overly concerned about confidentiality for such a young child. She often worried that she would be overheard during sessions at Mother's house.

According to the therapist, the child was more open when the counseling sessions were conducted at Father's home. She often invited Father to join her sessions. With his emotional support, she was able to talk about Stepfather. She admitted that her relationship with Stepfather was contentious at times. The child told the therapist that she always felt like a troublemaker around Stepfather—that she could not do anything right. She did not understand why she was being disciplined. She saw the situation as hopeless.

The therapist explained that the child's nervousness around Stepfather was not just the normal fear of getting in trouble. She was anxious and depressed. And she was hyper focused on doing and saying the right thing. In his opinion, she needed therapy. Without treatment, children like her could become overly self-critical and struggle with interpersonal relationships. These children often lacked motivation at school and became increasingly isolated. Through the therapy process, he was encouraging her to verbalize her frustrations to her parents. He believed she had strong, healthy relationships with both Mother and Father. He was also trying to help her build a better relationship with Stepfather.

Mother fully supported the child's therapy, but she saw no harm in Stepfather's behavior. In Mother's opinion, the child's anxiety stemmed from the current custody dispute, not Stepfather's use of corporal punishment. Both Mother and Stepfather had spanked her with a belt at times. Mother never saw Stepfather use excessive force. Nor did she notice any worrisome changes in the child. Still, they had implemented other forms of discipline, such as time out and restricting privileges, in the aftermath of the restraining order. Yet Mother complained that it was harder to discipline the child effectively without

corporal punishment as an option. And it seemed unfair, given that corporal punishment was used in Father's home.<sup>1</sup>

When asked about her recent move, Mother explained that she only moved a short distance. And the court had entered an agreed order reflecting the parties' agreement that the child would continue to attend her current school while the custody case was pending. Because she did not work outside the home, Mother was able to transport the child to school and extracurricular activities even though she lived outside the school district.

For his part, Stepfather described his relationship with the child as warm and affectionate. She showed no sign that she was afraid of him. He freely acknowledged his use of corporal punishment. He estimated that he whipped her with a belt four or five times before the entry of the restraining order. Like Mother, he viewed the child's tears as a normal reaction.

In Stepfather's view, the restraining order had not been beneficial. He believed that strong discipline was an essential child-rearing tool. As Stepfather explained, without the court's restraint, he would not hesitate to use corporal punishment if he deemed it necessary. He claimed that he always disciplined out of love, not anger. He wanted the children to learn that there were consequences for bad behavior. His rule for the girls was "three strikes and you're out." If verbal warnings failed, the girls were disciplined. But he never whipped them until after they agreed that they deserved it.

### C.

Several months after the first hearing, Father discovered a disturbing search history on the child's iPad. He also learned that she had been whipped again. At Father's request, the court scheduled another hearing and ordered her to return to weekly therapy. She resumed therapy with Mr. Luke a few weeks before the second hearing.

At the second hearing, the therapist testified that he believed that the child's older half-sister, not the child, had made the inappropriate searches. The girls were not at Mother's home when they viewed the inappropriate material. And the child seemed more embarrassed than interested. Even so, he noted that further exposure would be detrimental at her developmental level.

The child also told the therapist that she had been whipped with a belt again at Mother's house. This time, the discipline was meted out by Mother's 14-year-old niece,

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<sup>1</sup> Ms. Williams confirmed that corporal punishment was used in Father's home, albeit sparingly. After obtaining permission from Mother and Father, Ms. Williams had spanked the child with her hand a few times.

who was living with them at the time. The therapist discussed the incident with Mother. Mother advised him that it was an isolated incident. Based on her discussions with the teen, she believed that it would not happen again.

In the therapist's opinion, the child was more relaxed and open in the recent sessions at Mother's house. She even invited Mother into a session, something she had not done in the past. Even so, he recommended continuing the therapy sessions. Although the child's relationship with Stepfather had improved, there was still some tension. According to the therapist, her increased comfort at Mother's house was directly linked to the court's restriction on corporal punishment. The child admitted that she was nervous about what would happen after the court case ended. She did not want to return to the previous discipline regimen.

After hearing all the evidence, the court found that a material change in circumstances had occurred since the parties' divorce. In the court's view, a combination of factors had created the material change. The child developed significant emotional issues as a result of the use and threatened use of corporal punishment in Mother's home. Mother failed to grasp the severity of her emotional turmoil. And she chose to move to a new school district in the midst of this upheaval. Although the child's condition had improved with treatment, she needed additional therapy as a result of the conditions she experienced. And based on the relevant best interest factors, the court determined that it was in the child's best interest to change the primary residential parent to Father.

## II.

We review the trial court's factual findings de novo on the record with a presumption of correctness, unless the evidence preponderates otherwise. TENN. R. APP. P. 13(d); *Armbrister v. Armbrister*, 414 S.W.3d 685, 692 (Tenn. 2013). We give great deference to findings based on witness credibility, and we will not overturn such findings absent clear and convincing evidence to the contrary. *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007). We review the trial court's conclusions of law de novo with no presumption of correctness. TENN. R. APP. P. 13(d); *Armbrister*, 414 S.W.3d at 692.

Tennessee courts apply a two-step analysis for requests to modify a permanent parenting plan. *C.W.H. v. L.A.S.*, 538 S.W.3d 488, 496 (Tenn. 2017); *Brunetz v. Brunetz*, 573 S.W.3d 173, 179 (Tenn. Ct. App. 2018). The threshold issue is whether a material change in circumstances has occurred since the court adopted the current parenting plan. Tenn. Code Ann. § 36-6-101(a)(2)(B)(i), (C) (2021). If a material change has occurred, the court must then determine whether modifying the parenting plan is in the child's best interest by examining the statutory best interest factors. *Brunetz*, 573 S.W.3d at 179; Tenn. Code Ann. § 36-6-106(a) (2021). The "determinations of whether a material change in circumstances has occurred and whether modification of a parenting plan serves a child's

best interests are factual questions.” *Armbrister*, 414 S.W.3d at 692 (citing *In re T.C.D.*, 261 S.W.3d 734, 742 (Tenn. Ct. App. 2007)).

We apply the deferential abuse-of-discretion standard of review to “the details of parenting plans.” *Id.* at 693. A court abuses its discretion when it applies the wrong legal standard, reaches “an illogical or unreasonable decision,” or bases its decision “on a clearly erroneous assessment of the evidence.” *Lee Med., Inc., v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010).

A.

Not every change in circumstance is a material change; “[t]he change must be ‘significant’ before it will be considered material.” *In re T.C.D.*, 261 S.W.3d at 744. In determining whether a particular change warrants a change in custody, our courts are guided by several factors: (1) whether the change occurred after entry of the existing parenting plan; (2) whether the change was known or reasonably anticipated when the existing plan was adopted; and (3) whether the change affects the child’s well-being in a meaningful way. *Kendrick v. Shoemaker*, 90 S.W.3d 566, 570 (Tenn. 2002).

Here, the court found that several factors combined to create a material change in the child’s circumstances. The material change finding was based on

(a) the emotional and mental therapeutic needs of [the child], arising out of the use and threatened use of corporal punishment by Mr. and Mrs. Odom . . . ; (b) the move of the mother into another school district in the midst of existing emotional issues exhibited by [the child]; (c) the mother’s failure to grasp the gravity of issues held by [the child] and evidenced by her depressed mood, crying for no apparent reason, and anxiety; (d) the somewhat dramatic difference in parenting styles between the mother and father, which have evolved after the divorce, and which caused stress and anxiety that went unaddressed by the parties for several months; and (e) the need for initial and continued therapy for [the child] as a result of the experiences, behavior, and conditions she experienced prior to and since the filing of the petition for emergency custody and petition for modification.

The trial court also found that Stepfather slapped the child in the mouth. We agree with Mother that the evidence preponderates against this finding. By all accounts, he slapped the child’s half-sister, not the child.

Still, the evidence does not preponderate against the court’s other factual findings. Stepfather admitted he used a belt to discipline the child on multiple occasions. Mother condoned Stepfather’s actions. And the child began to withdraw. She developed anxiety and depression. She cried for no reason. Father noticed these changes. Mother did not.

And when Father voiced his concerns, Mother failed to respond. The child's therapist explained that her emotional issues resulted from the use and threatened use of corporal punishment in Mother's home. He recommended continued therapy to address her emotional and mental health issues. The court expressly found this testimony credible. We find no basis to disturb these findings on appeal. *See Coleman Mgmt., Inc. v. Meyer*, 304 S.W.3d 340, 348 (Tenn. Ct. App. 2009).

Mother argues that any issues with corporal punishment in her home have been rectified. She and Stepfather complied with the court's orders and implemented other discipline techniques. She contends that "in making this finding the court essentially punished her for past bad acts." *See Shofner v. Shofner*, 181 S.W.3d 703, 716 (Tenn. Ct. App. 2004) (recognizing that "[p]arenting plans should never be used to punish or reward the parents for their human frailties or past mis-steps").

Mother misapprehends the court's finding. The court did not find that the use of corporal punishment, by itself, was a material change. Rather, the court focused on the profound impact this punishment had on the child and Mother's failure to grasp the severity of the situation. While the court recognized the recent improvements in the child's condition, it did not credit Mother's claim that the problem had been remedied. As the child's therapist explained, she is still in need of therapy.

Mother also complains that her decision to move cannot be considered a material change in circumstances. *See Massey-Holt v. Holt*, 255 S.W.3d 603, 610 (Tenn. Ct. App. 2007) (rejecting any suggestion that a parent's move and subsequent enrollment of child in new school district was a change in circumstances). Again, the court did not find that Mother's move was a material change. Rather, it was the timing of the decision that concerned the court. Mother chose to move and potentially disrupt the child's education while her daughter was exhibiting signs of obvious emotional distress. Mother's decision, in combination with other factors, created a material change.

The evidence does not preponderate against the finding of a material change in circumstances sufficient to modify custody. Stepfather's behavior had a profound and dramatic impact on the child. Mother failed to grasp the gravity of the situation. The child needs continuing therapy to address her emotional and mental health issues. The proof showed that these changes have affected the child's well-being in a meaningful way. *Kendrick*, 90 S.W.3d at 570.

B.

Having found a material change, the court was required to make a new determination of which parent was “comparatively more fit than the other to be the custodial parent.” *McEvoy v. Brewer*, No. M2001-02054-COA-R3-CV, 2003 WL 22794521, at \*5 (Tenn. Ct. App. Nov. 25, 2003). The court first considered whether any statutory limiting factors applied on these facts. Tenn. Code Ann. § 36-6-406 (2021).<sup>2</sup> Finding none, it examined the evidence in light of the relevant statutory best interest factors. *Id.* § 36-6-106(a). The court concluded that it was in the child’s best interest to change the primary residential parent to Father.

Mother argues that the court failed to place sufficient weight on the evidence in her favor. She asserts that, as primary residential parent, she performed more parenting responsibilities than Father. In Mother’s view, this should have tilted factors (1), (5), and (10) in her favor. *See id.* § 36-6-106(a)(1), (5), (10).

We agree with the trial court that factors (1) and (5) weigh evenly in favor of both parents. Factor (1) looks at “[t]he strength, nature, and stability of the child’s relationship with each parent.” *Id.* § 36-6-106(a)(1). The court found that both parents “have a strong, stable, and loving relationship” with the child and have fully participated in her life. Despite Mother’s designation as primary residential parent, the evidence does not preponderate against these findings. Factor (5) considers “the degree to which a parent has been the primary caregiver.” *Id.* § 36-6-106(a)(5). Mother relies solely on the terms of the agreed plan to support her claim that she took greater responsibility for performing parenting responsibilities. But while Mother was awarded the majority of the parenting time, Father also received a significant amount of residential parenting time. The court found that both parents acted as primary caregiver at various times.

And we cannot fault the trial court for finding that factor (10) weighs in favor of Father. Factor (10) focuses on “[t]he importance of continuity in the child’s life and the length of time the child has lived in a stable, satisfactory environment.” *Id.* § 36-6-106(a)(10). The benefit of continuity is greater stability and security. *See Maxwell v. Woodard*, No. M2011-02482-COA-R3-CV, 2013 WL 2420500, at \*20 (Tenn. Ct. App, May 31, 2013). The child did not feel safe and secure in Mother’s home after Mother and Stepfather began using corporal punishment. Mother did not recognize the profound impact this change in the home environment had on the child. And she failed to respond

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<sup>2</sup> A court must limit a parent’s residential time if it finds that the parent has engaged in certain harmful conduct and a limitation is in the child’s best interest. *See* Tenn. Code Ann. § 36-6-406. Here, the court found that Mother had not engaged in any conduct which would require limiting her parenting time with the child. Contrary to Mother’s protests on appeal, this determination did not end the matter. Having found a material change, a best interest analysis was mandatory. *In re T.C.D.*, 261 S.W.3d at 746.

to Father's concerns until after he sought relief in court. Father provided the child with emotional support during this time period.

In analyzing factor (10), the court found continuity of the child's school life was extremely important in light of the concerns expressed by her therapist. She was thriving in her current school. Yet Mother voiced a preference for moving her to a school in the adjoining school district. The court found that it was not in her best interest to change schools. And Father wanted to keep her in her current school, where she had friends and extracurricular interests. Mother points out that she never changed the child's school. And her attorney announced on the last day of trial that Mother had decided to enroll the child in her current school district "no matter what." But, despite these facts, the evidence does not preponderate against the court's findings.

Mother also questions the court's analysis of factors (7) and (11), which the court found favored Father based on his prompt intervention after the child developed emotional issues. Factor (7) concerns the child's emotional needs and developmental level. Tenn. Code Ann. § 36-6-106(a)(7). Factor (11) focuses more narrowly on "[e]vidence of physical or emotional abuse to the child." *Id.* § 36-6-106(a)(11). There is ample evidence to support the court's findings on factor (7). Father noticed the changes in the child's demeanor and acted immediately while Mother did not. But we agree with Mother that factor (11) is inapplicable here. The court recognized that the use and threatened use of corporal punishment in Mother's home did not rise to the level of abuse.

Mother argues that factors (9) and (12) should have weighed in her favor based on the relatives residing in each house. In the court's view, factors (9) and (12) weighed evenly. Factor (9) considers the child's relationships "with siblings, other relatives and step-relatives." *Id.* § 36-6-106(a)(9). Mother complains that the court failed to place sufficient weight on the child's relationship with her half-sister from Mother's previous relationship. But the evidence supports the court's finding that the child had a good relationship with her half-siblings on both sides. Factor (12) looks at the character and behavior of other persons who reside in the parents' homes. *Id.* § 36-6-106(a)(12). Mother contends that this factor weighs in her favor because Ms. Williams<sup>3</sup> had a drug conviction. We cannot agree. The court acknowledged Ms. Williams's criminal record. But it credited her testimony that she had been drug-free for six years. The child has a good relationship with her stepmother. And Mother has never objected to Ms. Williams's presence in the child's life.

But we agree with Mother's challenge to the court's analysis of factor (14), which examines each parent's employment schedule. *Id.* § 36-6-106(a)(14). Father works from 8:30 a.m. to 6:00 p.m. each day as a hospice technician. Ms. Williams takes care of the

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<sup>3</sup> During the six months between the two hearings, Father and Ms. Williams were married.

child in the afternoons while he is at work. Mother argues that because she does not work outside the home, her schedule is more “child-friendly.” See *Wall v. Wall*, No. W2010-01069-COA-R3-CV, 2011 WL 2732269, at \*28 (Tenn. Ct. App. July 14, 2011). The court found this factor weighed evenly based on the availability Ms. Williams. But this factor requires the court to determine “[w]hich parent’s work schedule is better suited to serve the best interest of the child.” *Brown v. Brown*, 571 S.W.3d 711, 724 (Tenn. Ct. App. 2018) (emphasis added). Mother’s schedule allows her to spend more time with the child. This factor favors Mother.

Still, the court did not err in naming Father the primary residential parent. The court recognized that the child had a close, loving bond with both parents. But she developed serious emotional issues from the use and threatened use of corporal punishment in Mother’s home. The court had grave concerns about Mother’s failure to grasp the severity of the situation. Father “was more attuned” to the child’s emotional needs and developmental level than Mother. Father insisted on an end to corporal punishment. And he advocated for therapy. He objected to separating the child from her established routine at school, where she was thriving.

The best interest analysis is particularly “fact-intensive.” *Grissom v. Grissom*, 586 S.W.3d 387, 394 (Tenn. Ct. App. 2019). These decisions “often hinge on subtle factors, including the parents’ demeanor and credibility during the . . . proceedings.” *Gaskill v. Gaskill*, 936 S.W.2d 626, 631 (Tenn. Ct. App. 1996). The record indicates that Mother and Father are both good parents. And the trial court had the difficult task of determining which parent was comparatively more fit based on the evidence presented. The court applied the correct law, the factual basis for the decision is properly supported, and the decision is within the range of acceptable alternative dispositions. See *Lee Med., Inc.*, 312 S.W.3d at 524.

### III.

The evidence does not preponderate against the findings that a material change in circumstances had occurred and that it was in the child’s best interest to modify the primary residential parent. And we discern no abuse of discretion in the details of the modified parenting plan. So we affirm.

s/ W. Neal McBrayer  
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W. NEAL MCBRAYER, JUDGE